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| 10 | Attorneys for Plaintiff, Counter-defendant Epic Games, Inc. | | |
| 11 | [Additional counsel on signature page] UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA | | |
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| 13 | | | |
| 14 | OAKLAND DIVISION | | |
| 15 | EPIC GAMES, INC., | Case No. 4:20-cv-05640-YGR-TSH | |
| 16 | Plaintiff, Counter-defendant, | | |
| 17 | V. | EPIC GAMES, INC.'S ADMINISTRATIVE MOTION TO FILE | |
| 18 | APPLE INC., Defendant, Counterclaimant. | UNDER SEAL THE JOINT DISCOVERY LETTER BRIEF REGARDING EPIC'S | |
| 19 | | OUTSTANDING DOCUMENT REQUESTS AND SUPPORTING | |
| 20 | | EXHIBITS | |
| 21 | | | |
| 22 | | Judge: Hon. Magistrate Thomas S. Hixson | |
| 23 | Epic Games, Inc. ("Epic") brings this joint administrative motion under Civil Loca | | |
| 24 | Rules 7-11(a) and 79-5(d)-(e) for an order granting Epic leave to file under seal the Joint | | |
| 25 | Discovery Letter Brief Regarding Epic's Outstanding Document Requests (the "Joint Discovery | | |
| 26 | Letter Brief") and Supporting Exhibits 1 to 12 and A to F. | | |
| 27 | Civil Local Rule 79-5 provides that documents, or portions thereof, may be sealed | | |
| 28 | if a party "establishes that the documents, or portions thereof, are privileged, protectable as a trad | | |
| | Epic's Administrative Motion to File Under Seal the Joint Discovery Letter Brief Regarding Epic's Outstanding Document Requests and Supporting Exhibits Case No.: 4:20-cv-05640-YGR-TSH | | |

| 1 | secret or otherwise entitled to protection under the law." Civ. L.R. 79-5(b). Under this standard, | | |
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| 2 | party seeking to seal a document generally must overcome the "strong presumption in favor of | | |
| 3 | access" that applies to court documents other than those that are traditionally kept secret. | | |
| 4 | Kamakana v. City & Cnty. of Honolulu, 447 F.3d 1172, 1178 (9th Cir. 2006) (citations omitted). | | |
| 5 | However, the "public has less of a need for access to court records attached only to non- | | |
| 6 | dispositive motions because those documents are often 'unrelated, or only tangentially related to | | |
| 7 | the underlying cause of action." <i>Id.</i> at 1179 (citations omitted). Instead, a "good cause' showing | | |
| 8 | under Rule 26(c) [of the Federal Rules of Civil Procedure] will suffice to keep sealed records | | |
| 9 | attached to non-dispositive motions." Id. at 1180; In re NCAA Student-Athlete Name & Likeness | | |
| 10 | Licensing Litig., 2013 WL 3014144, at *1 (N.D. Cal. Jun. 17, 2013). A party seeking to seal such | | |
| 11 | material must make a "particularized showing of good cause with respect to any individual | | |
| 12 | document." San Jose Mercury News, Inc. v. U.S. Dist. Court, N. Dist. (San Jose), 187 F.3d 1096, | | |
| 13 | 1103 (9th Cir. 1999). Sealing requests must also be "narrowly tailor[ed]." Civ. L.R. 79-5(b). | | |
| 14 | Subsection (e) of Local Rule 79-5 sets forth procedures that apply when a party | | |
| 15 | seeks to file information designated as confidential by an opposing party. This Administrative | | |
| 16 | Motion is based on Defendant Apple Inc.'s ("Apple") designation of information in the Joint | | |
| 17 | Discovery Letter Brief and its exhibits as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – | | |
| 18 | ATTORNEYS' EYES ONLY" under the protective order in the above-captioned actions. (Epic | | |
| 19 | Games, Inc. v. Apple Inc., No. 20-cv-05640-YGR-TSH, ECF No. 274.) Epic does not believe that | | |
| 20 | the Joint Discovery Letter Brief and or any of the Supporting Exhibits meet the standard for | | |
| 21 | sealing. But at Apple's request, Epic is filing the documents in their entirety under seal. Pursuant | | |
| 22 | to subsection (e)(1) of Local Rule 79-5, Apple has four days to file a declaration establishing that | | |
| 23 | all of the designated material is "sealable" (as defined in Local Rule 79-5(b)). | | |
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| 1 2 3 | Dated: January 29, 2021 | CRAVATH, SWAINE & MOORE LLP Christine Varney Katherine B. Forrest Gary A. Bornstein Yonatan Even Lauren A. Moskowitz M. Brent Byars |
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| 5 | | Respectfully submitted, |
| 6 | | By: <u>/s/ Lauren A. Moskowitz</u> Lauren A. Moskowitz |
| 7 | | Attorneys for Plaintiff, Counter-defendant |
| 8 | | Epic Games, Inc. |
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